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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
MOHAMMAD YOUSUF CHAUDHRY,)
and)
ALI H. KHAN,)
)
Defendants.)

No. CR 03-40210 SBA

**UNITED STATES' MOTION IN LIMINE TO
EXCLUDE PUBLIC AUTHORITY DEFENSE**

Pretrial: September 11, 2007
Trial Date: September 24, 2007
Time: 8:30 a.m.
Court: Courtroom No. 3
Hon. S. Brown Armstrong

Jury selection in this matter is scheduled to begin on September 24, 2007. The trial date in this matter has been continued numerous times. As a result, the United States previously filed motions in limine in or about August 2006. In addition, to those pending motions, the United States submits the following motion *in limine* to preclude the introduction of evidence pertaining to and argument concerning the defense of public authority.

BACKGROUND

After one check casher filed multiple CTRs on defendant Chaudhry, IRS Revenue Agent (RA) Clarence Walker was assigned to investigate Chaudhry and his businesses. RA Walker,

1 however, was corrupt. Rather than investigating the defendants' criminal activity, RA Walker
2 advised the defendants how to reduce their chances of getting caught. The defendant, possibly
3 on the advice of RA Walker, filed his own CTRs claiming that his companies were not in the
4 business of selling software but, rather, were in the business of cashing checks. In this way,
5 defendant Chaudhry attempted to create a defense to the charge that he failed to report large
6 amounts of income on his business' tax returns. The purported defense is that because RT and
7 AES did not receive the cash from the checks but, instead, provided cash to their customers in
8 exchange for a small fee, only the check cashing fee, and not the entire amount of the check,
9 needed to be reported on his corporate tax returns. The defendants are also anticipated to assert
10 that, because they were acting on the advice of SA Walker, they did not willfully violate the law.

11 ARGUMENT

12 The defense of "public authority" arises where the defendant claims to be acting on
13 behalf of public law enforcement authority when caught committing an offense. In order to raise
14 this defense at trial, a defendant must submit notice of his intention to assert a public authority
15 defense in advance of trial by the time set by the trial court for pre-trial motions in accordance
16 with FED. R. CRIM. P. 12.3(a)(1). Here, neither defendant has made any such filing or otherwise
17 given notice that he intends to assert a defense of public authority. However, defense counsel
18 has made statements which the United States believes indicate that at trial he may falsely argue
19 that they were acting under the authority of former IRS Revenue Agent Clarence Walker when
20 defendant Chaudhry completed and filed tax returns for RT and AES, when defendants
21 Chaudhry and Kahn cashed structured checks, and when defendants completed and filed
22 fraudulent Currency Transaction Reports (CTRs). However, Walker himself has been convicted
23 of conspiracy and causing a failure the failure to file CTRs. Thus, he could not have authorized
24 the defendants to act as they did. *See United States v. Mack*, 164 F.3d 467, 474 (9th Cir. 1999)
25 (affirming trial court's determination that defense request for public authority jury instruction
26 was without merit "because [the defendant] did not rely on the advice or authority of federal
27 officials or agents"); *accord United States v. Achter*, 52 F.3d 753, 755 (8th Cir. 1995) (local law
28 enforcement does not have the authority to sanction a violation of federal law).

1 The public authority defense is available only when a defendant has committed an
2 otherwise illegal act in reasonable and sincere reliance upon a statement or act of a government
3 agent with actual legal authority to empower the commission of the illegal act in question. *See*
4 *United States v. Matta-Ballesteros*, 71 F.3d 754, 770 n.12 (9th Cir. 1995), *as amended*, 98 F.3d
5 1100 (9th Cir. 1996); *see also United States v. Burrows*, 36 F.3d 875, 881-82 (9th Cir. 1994).
6 Even assuming the defendants relied on the advice of Clarence Walker believing him to be a
7 legitimate, rather than a corrupt, IRS Revenue Agent, Walker did not have the authority to
8 authorize the defendants' violation of tax and structuring laws. *See United States v. Duggan*,
9 743 F.2d 59, 83-84 (2d Cir. 1984) (defense of public authority requires government agent to
10 have actual authority to authorize violation of federal law). Indeed, the United States is unaware
11 of any plausible argument that the defendants had the public authority to carry-out the charged
12 crimes.

13 When a defendant fails to make a prima facie showing for the defense, the defendant
14 may be precluded from presenting the defense, as well as any supporting evidence, at trial. *See*
15 *United States v. Moreno*, 102 F.3d 994, 997 (9th Cir. 1996) (evidence is not relevant if the
16 defendant fails to present a prima facie case of the affirmative defense); *see also United States v.*
17 *Mack*, 164 F.3d 467, 474 (9th Cir. 1999) (defenses of public authority and entrapment by
18 estoppel ruled inadmissible prior to trial). Here, the defendants have not, and cannot, make such
19 a prima facie showing. Therefore, any evidence they seek to introduce – either through cross-
20 examination of the United States' witnesses, testimony of witnesses called on their own behalf,
21 or the introduction of documents – should be excluded..

22 Moreover, even if a public authority defense were available, the defendants are precluded
23 from offering such a defense because they failed to provide notice of their intention to assert that
24 defense. Pursuant to Rule 12, a defendant must give written notice if he wishes to rely on the
25 defenses of public authority. Here, neither defendant has made a Rule 12 disclosure that has
26 advised the United States whether he intends to rely on a public authority defense. Defendant
27 Chaudhry's attorney has indicated his intention to call as a witness Clarence Walker, a former
28 IRS revenue agent who was charged with crimes involving defendant Chaudhry. If the defense's

1 intent is to claim that the defendants acted on the advice and counsel of a person whom he
2 believed to be a legitimate IRS agent, this defense should be precluded because the defendants
3 did not provide the proper notice under Federal Rule of Criminal Procedure 12.3.

4 **CONCLUSION**

5 For the foregoing reasons, the United States respectfully requests that the Court enter the *in*
6 *limine* orders requested.

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8 DATED: August 22, 2007

Respectfully Submitted,

9 SCOTT N. SCHOOLS
10 United States Attorney

11 /s/
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13 KIRSTIN M. AULT
14 Assistant United States Attorneys
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